



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,383	08/28/2001	Dana C. Bookbinder	SP01-243 / 9272-7	6010
20792	7590	03/31/2005	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			HOFFMANN, JOHN M	
			ART UNIT	PAPER NUMBER
			1731	

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/941,383

Applicant(s)

BOOKBINDER ET AL.

Examiner

John Hoffmann

Art Unit

1731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) The period for reply expires _____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. Applicant's reply has overcome the following rejection(s): _____.
 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-12,38-44 and 47.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
 13. Other: _____.

John Hoffmann
Primary Examiner
Art Unit: 1731

3-29-05

Continuation of 11. does NOT place the application in condition for allowance because: It is argued that none of the cited references teach washers and o-rings equivalent sealing devices. As set forth in the rejection, the Office's position is that the reference demonstrate that they are equivalents. Applicant has not provided little evidence/rationale to the contrary. Whereas applicant argues that merely mentioning the features in the same sentence does not constitute equivalence, such is not very relevant because such is not the basis for the Office's conclusion. The Office considered what the sentences actually teaches about o-rings, washers and equivalence. Applicant's arguments fail to addressed the actual teachings of the prior art - and what they suggest to one of ordinary skill. Examiner has considered the teachings once again and remains convinced they teach that o-rings and washers are equivalents.

Applicant then provides supposed evidence: dictionary definitions; and then concludes that o-rings and washers are not equivalents. Examiner does not see a connection between the definitions and Applicant's conclusion. A reasonable explanation is lacking. Examiner can only guess at the connection: It appears that implied logical step is that since washers and o-rings are not identical, they are not equivalents. This is not convincing. Things need not be the same to be equivalents. For example, in Smith v. Hayashi, 209 USPQ 754 (Bd. of Pat. Inter. 1980) it was held that selenium and phthalocyanine were equivalents in electrophotography; Examiner doubts that any dictionary would ever suggest they were identical.

It is further argued that there is no motivation to substitute a washer over the Koaizawa plate in replacement for the o-ring which is located in the shaft passage of Koaizawa. This is largely irrelevant because no motivation is required:

An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. In re Fout, 675 F.2d 297, 213 USPQ 532 (CCPA 1982). This citation is included in MPEP 2144.06 and thus is deemed to be current Office policy for a proper determination of obviousness.

It is further argued that there is no motivation to supply the washer over the plate. Drouart and Ryoji disclose how one of ordinary skill in the optical fiber art would utilize sealing washers. As indicated in the Final rejection, physical compatibility is not necessary for substitution of parts. Clearly if one of ordinary skill is using equivalent sealing means, the details of the exact sealing arrangement would be based on what ordinary skill knows about how to use the sealing means.

Lastly it is argued that Ryoji is a leaky system. Since Applicant has provided no basis for the assertion and since Ryoji's English-language Abstract indicates that Ryoji is directed to enhanced airtightness, the argument is not convincing.